

2005-001

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8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 DAVID A. HARNER,

13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA COASTAL COMMISSION,
16 et al.,

17 Respondents and Defendants,

18 ACCESS FOR ALL, et al.,

19 Defendants and Indispensable Parties.

20 CALIFORNIA COASTAL COMMISSION,

21 Cross-Complainant,

22 v.

23 DAVID HARNER, and ROES 1 through
24 100, inclusive,

25 Cross-Defendants,

26 ACCESS FOR ALL,

27 Real Party in Interest.
28

CASE NO. SS013093

STIPULATION FOR ENTRY OF
JUDGMENT

Dept: 40
Judge: Honorable Ann I. Jones

Trial Date:
Action Filed: December 13, 2004
Cross-Complaint Filed: Feb. 10, 2005

1 IT IS HEREBY STIPULATED AND AGREED by and among the parties as follows:

2 1. This stipulation of the parties for entry of judgment ("stipulation") is a settlement of
3 the above-captioned petition for writ of mandate ("petition") and related cross-complaint. David
4 A. Harner ("Harner") filed the petition against the California Coastal Commission ("Coastal
5 Commission") to challenge an enforcement decision of the Coastal Commission. The Coastal
6 Commission filed a cross-complaint against Harner alleging various violations of the California
7 Coastal Act of 1976, Public Resources Code, section 30000 et seq. ("Coastal Act"). The petition
8 and related cross-complaint shall be referred to collectively as "the litigation."

9 2. Harner is the owner in fee simple of the following parcel of beachfront real property in
10 Malibu: APN No. 4449-003-027 (19016 Pacific Coast Highway, Malibu, California) ("subject
11 property").

12 3. The parties agree that judgment shall be entered as described in this stipulation. The
13 proposed stipulated judgment is attached as Exhibit A. A separate copy of the proposed
14 stipulated judgment is being lodged concurrently with this stipulation.

15 PETITION

16 4. Harner's petition is hereby dismissed in its entirety and with prejudice.

17 CROSS-COMPLAINT

18 5. The Coastal Commission's cross-complaint is hereby dismissed in its entirety and with
19 prejudice.

20 PERMANENT INJUNCTION

21 6. On October 23, 2006, the Honorable Dzintra Janavs heard the petition and on
22 November 15, 2006, the Court entered its order denying the petition in its entirety with respect to
23 Harner's challenge to the Coastal Commission's Cease and Desist Order No. CCC-04-CD-10
24 ("Cease and Desist Order"). The Cease and Desist Order shall be incorporated into the stipulated
25 judgment and have the full force and effect of a permanent injunction issued by a Court of
26 competent jurisdiction. (A true and correct copy of the Cease and Desist Order is attached to the
27 stipulated judgment.)
28

- 1 a. Within ninety (90) days of the date on which the Coastal Commission serves notice of
2 entry of judgment, Harner shall submit to the Coastal Commission's Executive
3 Director (Executive Director) for his approval a plan for removal of the unpermitted
4 development in the vertical access easement (removal plan). The removal plan shall
5 contain a timetable for completion of the removal of the unpermitted development.
6 Harner shall modify the removal plan as necessary to receive the Executive Director's
7 approval. Harner shall make such modifications to the removal plan within 60 days of
8 Executive Director notice that such modifications are necessary to receive Executive
9 Director approval. The Executive Director shall extend the time periods provided in
10 this paragraph by an additional 60 days if Harner or his agent demonstrates to the
11 Executive Director's satisfaction that conditions beyond Harner's control, for example,
12 tidal conditions or storms, prevented the timely submission of the removal plan or the
13 modification of the removal plan.
- 14 b. Upon the Coastal Commission's written notification to Harner that Real Party in
15 Interest Access for All is prepared to commence construction of improvements in the
16 access easement, Harner shall within 30 days commence removal of the unpermitted
17 development in the vertical access easement on the subject property in accordance with
18 the Executive Director-approved removal plan.
- 19 c. Within 3 days of completing the removal of the unpermitted development in the
20 vertical access easement on the subject property, Harner shall provide Access for All
21 with written notice that the removal is complete. Harner shall provide a copy of this
22 written notice to Aaron McLendon, Statewide Enforcement Analyst, California Coastal
23 Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.
- 24 d. Within seven (7) days of receipt of Harner's notice of completion of removal of the
25 unpermitted development in the vertical access easement on the subject property,
26 Access for All shall secure the vertical access easement and prevent public entry
27 thereon until such time that Access for All opens the vertical access easement for
28 public use.

1 e. Upon receipt of Harner's notice of completion of removal of the unpermitted
2 development in the vertical access easement on the subject property, Access for All
3 shall commence construction of the access improvements within 15 days. Harner shall
4 allow Access for All to access the vertical access easement for purposes of constructing
5 and maintaining the access improvements.

6 f. Harner shall not interfere with Access for All's planning, construction or maintenance
7 of its access improvements, including access to the vertical easement for such
8 purposes.

9 **OTHER CONDITIONS RELATING TO IMPROVEMENTS**

10 7. Within ninety (90) days of the date on which the Coastal Commission serves
11 notice of entry of judgment, Harner shall file a complete coastal development permit amendment
12 application with the Coastal Commission addressing any new development that may be necessary
13 regarding his septic system, return wall or bulkhead. The Executive Director shall extend the
14 time period provided in this paragraph by an additional 60 days if Harner or his agent
15 demonstrates to the Executive Director's satisfaction that conditions beyond Harner's control, for
16 example, tidal conditions or storms, prevented the timely submission of the complete permit
17 application. The processing of this application shall not relieve Harner of his obligation to
18 comply with Paragraph 6 herein.

19 8. The parties do not anticipate that the amendment application referenced in
20 Paragraph 7 will require the oversight or approval of the City of Malibu. If, however, the City of
21 Malibu asserts jurisdictional authority over any aspect of the amendment application, any
22 resulting delay in Harner's compliance with Paragraph 7 will not subject Harner to the fines set
23 forth in Paragraph 11, provided Harner responds in good faith and within a reasonable time to the
24 requests of the City of Malibu.

25 9. Prior to the Coastal Commission providing written notification to Harner as
26 specified in Paragraph 6.b, AFA shall establish to the satisfaction of the Executive Director that
27 it is prepared to commence construction of improvements in the vertical access easement
28 including that it has necessary permits, financing and construction contracts, and that its

1 contractors are licensed and insured.

2 10. The Commission shall use its best efforts to inform Harner or his agent of any
3 information the Commission may need in order to approve the removal plan or for a complete
4 coastal development permit amendment application.

5 PAYMENT OF ATTORNEYS' FEES

6 11. Petitioner shall pay the California Department of Justice twenty thousand dollars
7 (\$20,000.00) in attorneys' fees. Such payment shall be made within ten (10) days of the date on
8 which the Coastal Commission serves notice of entry of judgment. Harner shall deliver to
9 Supervising Deputy Attorney General John A. Saurenman, California Department of Justice, 300
10 South Spring St., Los Angeles, CA 90013, a certified or cashier's check in the amount of twenty
11 thousand dollars (\$20,000.00) payable to the "CALIFORNIA DEPARTMENT OF JUSTICE."
12 Harner shall provide a copy of the check to Aaron McLendon, Statewide Enforcement Analyst,
13 California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.

14 ENFORCEMENT OF STIPULATED JUDGMENT

15 12. Should Harner violate any term set by the stipulated judgment, including the
16 permanent injunction, Harner shall be liable for a penalty in the amount of seven hundred and
17 fifty dollars (\$750.00) for each day Harner is in violation. Before any such penalty is imposed,
18 the Coastal Commission shall give Harner no less than ten (10) days written notice of the Coastal
19 Commission's intent to enforce this penalty provision. If at the end of such ten (10) days Harner
20 is still in violation of the stipulated judgment, the Coastal Commission may enforce this penalty
21 provision for the entire period of noncompliance regardless of whether Harner has subsequently
22 complied. Harner shall pay the Coastal Commission such penalty within ten (10) days of receipt
23 of the Coastal Commission's second written notice to enforce this penalty provision. Payment of
24 the penalty shall be delivered to Aaron McLendon, Statewide Enforcement Analyst, California
25 Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219, in the form
26 of a certified or cashier's check made out to: "CALIFORNIA COASTAL COMMISSION,
27 VIOLATION REMEDIATION ACCOUNT." Such penalty shall be computed from the first day
28 Harner stood in violation of the stipulated judgment as noted in the notice sent by the Coastal

Commission or in other subsequent correspondence. Payment of such penalty shall not relieve Harner of his duties under the stipulated judgment.

OTHER TERMS

13. This Court has jurisdiction over the subject matter of and the parties to this litigation.

14. The Coastal Commission waives all Coastal Act fines and penalties, if any, for the unpermitted development in the vertical access easement for the time period prior to entry of the stipulated judgment.

15. This stipulation represents the complete and final agreement of the parties and fully settles and resolves all issues presented in the litigation.

16. None of the provisions herein shall constitute evidence or an admission of liability on the part of any of the parties.

17. The parties waive any statement of decision and all rights of appeal from the stipulated judgment.

18. The Executive Director may grant extensions of all time periods specified herein if he or she determines there is good cause for an extension, and he or she shall not unreasonably deny extension requests.

19. Other than Harner's payment of attorneys' fees as set forth in Paragraph 11 above, the parties shall bear their own attorneys' fees and costs.

20. The Court shall retain jurisdiction for the purpose of enabling any party to the litigation to apply to the Court for any further orders, directions or relief as may be necessary and appropriate for the stipulated judgment's construction, execution, modification, and enforcement of compliance. Such application shall be made in the first instance to the Honorable Ann I. Jones, Judge of the Superior Court. If Judge Jones is not available, pursuant to all applicable rules, the Superior Court may assign the stipulated judgment to a judge, commissioner or judge pro tem of the Superior Court for the County of Los Angeles as required to fulfill its terms.

1 DATED: January 10, 2008

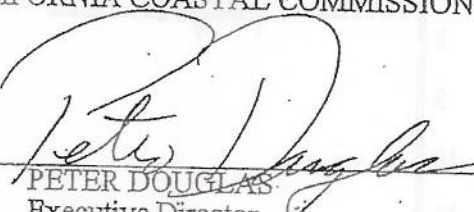
EDMUND G. BROWN JR.
Attorney General
JOHN A. SAURENMAN
Supervising Deputy Attorney General

By 
JOHN A. SAURENMAN

Attorneys for California Coastal Commission

8 DATED: January 10, 2008.

CALIFORNIA COASTAL COMMISSION

By 
PETER DOUGLAS
Executive Director

1 DATED: 1/28/08

RONALD ZUMBRUN
ANGELA THOMPSON
THE ZUMBRUN LAW FIRM

2
3
4 By Angela C. Thompson
ANGELA THOMPSON

5
6 Attorneys for David A. Harner

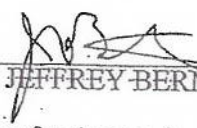
7 DATED: 1/28/08

DAVID A. HARNER

8
9
10 By [Signature]
DAVID A. HARNER

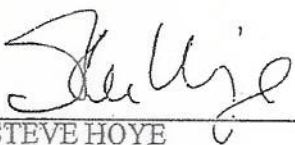
1 DATED: 7/4/08

JEFFREY BERNSTEIN, Esq.

2
3 By 
4 JEFFREY BERNSTEIN
5 Attorney for Access for All

6
7 DATED: 1/8/08

ACCESS FOR ALL

8
9 By 
10 STEVE HOYE
11 Executive Director

12 60263561.wpd

Access for All
PO Box 1704
Topanga, California 90290

June 5, 2004

PUBLIC VERTICAL AND LATERAL ACCESS EASEMENT MANAGEMENT PLAN

By this agreement, Access for All, a California nonprofit corporation incorporated and qualified as a 501(c)(3) organization, undertakes to manage a vertical and a lateral public access easement offered for dedication within the City of Malibu, Los Angeles County. These easements are located at 19016 Pacific Coast Highway, Malibu, CA 90265, and were required pursuant to Coastal Development Permit #5-83-456, Friedman.

Background

To permanently protect the public's right to access State Tidelands and to mitigate the impact of private development upon public access, the California Coastal Commission required that an offer to dedicate a vertical and lateral public access easement be recorded on this site.

Directly upcoast and contiguous with the 3 ft. wide Friedman easement is a 3 ft. wide vertical Deed Restricted area recorded by Hundley, #P-77-376 at 19020 PCH. The Hundley Deed Restriction also provides for lateral access 25 ft inland from the mean high tide line. The terms of the Hundley Deed Restriction provides only for passive recreational use, not for physical improvements. Therefore Access for All will strictly limit all future public access improvements to the 3ft wide Friedman site.

Purpose/ Area Description

The purpose of this easement is to provide vertical and lateral public pedestrian access to and along the Tuna Canyon beach area. The nearest public vertical accessway in this area is located downcoast at Topanga State Beach, approximately 2000 feet to the east, where there are also public restroom facilities and lifeguards. Currently, the public informally accesses this Tuna Canyon beach area from the inland side of PCH at the intersection with Tuna Canyon Boulevard. There is a homemade ladder that the public uses to drop down about six ft. from the road to the Tuna Canyon drainage. They then walk through a large drainage culvert, hoping to avoid stepping into the dirty drainage water, pass under PCH and arrive at the beach. The beach in this area is relatively narrow, depending upon the tide and season. Off shore rocks provide tide-pooling opportunities.

Easement Description/ Public Improvements

The vertical easement is 3 feet wide and is located along the western boundary of the property line, extending from the northerly property line to the mean high tide line. The lateral easement is located the width of the property, from the mean high tide line landward to the drip line of the most seaward extent of the structure.

The easement begins at the sidewalk adjacent to PCH, and then drops down about 15 ft. to the beach. A 6 ft. high, solid fence blocks viewing of the easement from PCH. When viewing the 3 ft. wide easement from the beachside, private development has been constructed including at least the following: a gate at the sidewalk, private bluff stairway, concrete pad, septic system and bulkhead. Given the existing private encroachments, it is not possible for Access for All to develop a plan to open this easement for public use until a survey of the easement is completed and the encroachment issue is resolved by the Coastal Commission. Therefore, development of the accessway will be accomplished in two phases.

Phase 1: Access for All will accept the vertical and lateral OTDs. Upon acceptance, Access for All will hire a surveyor to locate the boundaries of the easements and identify the encroachments within the easement areas. Once the encroachments are identified, Access for All will submit the information to the Coastal Commission staff for review and action.

Phase 2: Once the issue of encroachments has been resolved, Access for All intends to install a see-through gate at the sidewalk adjacent to PCH and construct a stairway down to the beach. Access for All will work with the property owner to design these improvements. Once Access for All designs the final improvements, they will be submitted to the Coastal Commission and Coastal Conservancy staffs for review and approval and subsequent amendment to this Management Plan, prior to placement of any improvements on the site.

Operation and Maintenance

Access for All intends to operate this vertical easement from sunrise to sunset daily, consistent with Los Angeles County beach opening hours, as soon as possible. A trash receptacle will be placed by the gate and will be emptied weekly. A public access sign will be installed on the entrance gate at PCH.

Monitoring/Annual Report

An evaluation report shall be submitted to the Coastal Commission and Coastal Conservancy by February 1 of each year. This report shall describe the status of the easements, note any new signs or other developments that may have occurred, identify when trash has been removed, and any other activities that affect the public's use of the easements.

Amendment

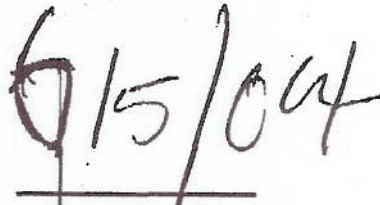
This plan may be amended, as deemed appropriate, with concurrence of all three signatories.

Agreement

Should Access for All cease to exist or fail to carry out its responsibilities pursuant to the approved management plan, then all right, title, and interest in the easement shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry is set forth in the Certificates of Acceptance/Certificates of Acknowledgment by which Access for All has agreed to accept the OTDs. The foregoing is agreed to by and between Access for All, the California Coastal Commission and the State Coastal Conservancy.



Steve Hoyer
Executive Director
Access for All



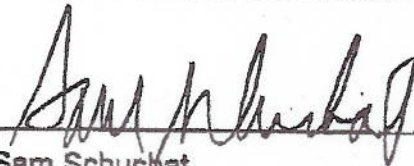
Date



Peter M. Douglas
Executive Director
California Coastal Commission



Date



Sam Schuchat
Executive Officer
State Coastal Conservancy



Date

